

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Application of)	
)	File No. EB-02-IH-0768
STAR WIRELESS, LLC)	NAL/Acct. No. 200332080021
)	FCC Account ID No. 0441724048
For C Block Facilities in the)	FRN No. 0007043409
710-716 and 740-746 MHz Bands)	

FORFEITURE ORDER

Adopted: September 21, 2004

Released: September 22, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, issued pursuant to section 503 of the Communications Act of 1934, as amended (the “Act”), and section 1.80 of the Commission’s rules,¹ we find that Star Wireless, LLC (“Star”) engaged in collusive conduct during a Commission-conducted auction in 2002, in willful and repeated violation of section 1.2105(c) of the Commission’s rules.² Based on the information before us, we conclude that Star is liable for a forfeiture in the amount of One Hundred Thousand Dollars (\$100,000).

II. BACKGROUND

2. This matter arises from misconduct by two auction applicants, Star and Northeast Communications of Wisconsin (“Northeast”), during the Commission’s August 27-September 18, 2002, auction of 740 Lower 700 MHz Band C and D block geographic area licenses (“Auction No. 44”). On August 27, 2003, following a comprehensive investigation of possible collusive activities between Star and Northeast, the Chief, Enforcement Bureau (“Bureau”), issued a Notice of Apparent Liability for Forfeiture (“NAL”), proposing a forfeiture in the amount of \$100,000 against Star.³ The facts that formed the basis for the proposed forfeiture are set forth at considerable length in the NAL and are specifically incorporated by reference herein. The NAL found that Star and Northeast were both applicants for 734 of the same geographic license areas in Auction No. 44 and that, during the course of that auction, a representative of Star apparently engaged in prohibited communications with his counterpart at Northeast about bidding strategy in that auction, in apparent willful and repeated violation of section 1.2105(c) of the Commission’s Rules. Specifically, the NAL found that Star had apparently violated section 1.2105(c) on August 28, 2002, when David G. Behenna, Star’s authorized bidder and the President of PCSGP, Inc.,⁴ Star’s Operating Manager, telephoned Patrick Riordan, a shareholder, officer,

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² 47 C.F.R. § 1.2105(c).

³ *In re Star Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 17,648 (EB 2003) (“NAL”).

⁴ Mr. Behenna holds 100% of PCSGP’s fully diluted shares of common stock. He is PCSGP’s President, Secretary, Treasurer and sole Director. See Star FCC Form 175, Exhibit A.

director of and authorized bidder for Northeast,⁵ to solicit information concerning any auction-related markets in which Northeast, which had not made the necessary upfront payment and, accordingly, could not bid, might have a business interest. The NAL also found that Star apparently violated section 1.2105(c) on August 29, 2002, when Mr. Riordan returned Mr. Behenna's telephone call and he and Mr. Behenna discussed Northeast's interest in five Wisconsin markets identified by Mr. Riordan.

3. On September 26, 2003, Star filed its response to the NAL, requesting rescission or reduction of the proposed forfeiture.⁶ In support of its position that the proposed forfeiture should be rescinded, Star argues that it did not violate section 1.2105(c) because: Northeast was not an applicant in Auction No. 44 when the communications in question took place;⁷ section 1.2105(c) has never been applied to the specific facts of this case;⁸ Star and Northeast never reached any agreement as a result of their communications;⁹ the communications at issue are beyond the scope of section 1.2105(c) because they were so vague that they could not have compromised the auction process;¹⁰ section 1.2105(c) was never intended to prohibit communications between two entities, only one of which is a qualified bidder;¹¹ the proposed forfeiture is inconsistent with past applications of section 1.2105(c) and disproportionate to other similarly-situated cases;¹² and assessment of a forfeiture in this instance will have a chilling effect on voluntary disclosure of potential violations in the future.¹³ Star also argues in the alternative that, if it did violate section 1.2105(c), the proposed forfeiture should be substantially reduced because the communications in question resulted in only one violation, not two.¹⁴

III. DISCUSSION

4. In order to enhance and ensure the competitiveness of markets for communications services, the Commission adopted rules designed to prevent collusive conduct during auctions, facilitate the detection of such misconduct, and maintain public confidence in the integrity of the auction process.¹⁵ If collusive conduct were permitted during the auction process, the result could be the elimination of

⁵ Northeast is a closely-held telecommunications holding company located in Green Bay, Wisconsin, owned and controlled by four siblings, Patrick D. Riordan, Robert H. Riordan, Micki Harper and Ray J. Riordan, who are each officers and directors and collectively hold over 52 percent of its stock.

⁶ Letter from Paul W. Jamieson, counsel for Star, to Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated September 26, 2003 ("*Response*").

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ *Id.* at 3-5.

¹⁰ *Id.* at 5-6.

¹¹ *Id.* at 6-7.

¹² *Id.* at 7-9.

¹³ *Id.* at 9-10.

¹⁴ *Id.* at 10.

¹⁵ See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2386-88, ¶¶221-226 (1994) ("Competitive Bidding Second Report and Order") ("[W]e believe that the competitiveness of the auction process and of post-auction market structure will be enhanced by certain additional safeguards designed to reinforce existing laws and facilitate detection of collusive conduct.").

potential participants in auctions and competitors in the marketplace.¹⁶ Consequently, the Commission adopted section 1.2105(c), frequently referred to as the “anti-collusion rule.” Section 1.2105(c)(1) states, in pertinent part:

[A]fter the [FCC Form 175] short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicant's bids or bidding strategies, or discussing or negotiating settlement agreements, until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 1.2105(a)(2)(viii).¹⁷

Thus, the prohibition against collusive communications set forth in section 1.2105(c) takes effect on the pre-auction short-form application deadline and remains in place until the down payment deadline, after the close of the auction.¹⁸ By its very language, the prohibition contained in section 1.2105(c) applies to all *applicants* for licenses in a Commission auction. Moreover, the Commission and the staff have repeatedly made clear that the prohibition against collusive contacts and communications contained in section 1.2105(c) applies to all entities that file short-form applications, *regardless of whether they are qualified to bid*.¹⁹

¹⁶ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd 2348, 2387, ¶223; *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7687-7688, ¶10 (1994) (“Our anti-collusion rules are intended to protect the integrity and robustness of our competitive bidding process.”).

¹⁷ 47 C.F.R. § 1.2105(c)(1). Section 1.2105(a) requires that each auction applicant submit a short-form application (FCC Form 175) in order to participate in an auction. See 47 C.F.R. §1.2105(a).

¹⁸ 47 C.F.R. § 1.2105(c)(1). See also *Amendment of Part 1 of the Commission's Rules- Competitive Bidding Procedures*, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 15923 (2000) at 15297-98, ¶¶ 7-8.

¹⁹ The public notice announcing how parties could apply to participate in Auction No. 44 explicitly reminded potential participants of the Commission's anti-collusion rule, that the rule was applicable to all applicants, and that the rule would apply from the deadline for filing short-form applications until the post-auction down payment deadline. See *Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002*, Public Notice, DA 02-563 (WTB rel. March 20, 2002) (“*Procedures PN*”) at 7 (“[T]he Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.”). The *Procedures PN* directed applicants to a list of precedents applying the anti-collusion rule, several of which explicitly applied the rule to applicants, such as Northeast here, that subsequently did not bid in the auction. *Id.* at Attachment G (citing, *inter alia*, Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to except an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder); Letter to Mark Grady, President, Communications Venture PCS Limited Partnership, from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, Federal Communications Commission, 11 FCC Rcd 10895 (WTB 1996) (“Even when an applicant has withdrawn its application during the course of the auction, the applicant may not enter into a bidding agreement with another applicant bidding on the geographic license areas from which the first applicant withdrew.”)). See also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6867 ¶ 50-51 (1994) (rejecting the argument that communications prohibited by the anti-collusion rule should be permitted during auctions between active and non-active bidders); Letter to John Reardon, Secretary to the Board of Directors and General Counsel, Mobex Communications, Inc., from Amy J.

5. Turning to the instant case, we reject Star's contention that it did not violate section 1.2105(c) because when it discussed its bidding strategy with Northeast, Northeast was not an "applicant for licenses."²⁰ In support, Star relies on a May 24, 2002, Public Notice issued by the Wireless Telecommunications Bureau ("WTB") relating to the status of applications filed in Auction No. 44.²¹ Therein, WTB stated, "Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments by the May 30, 2002 deadline . . . If no upfront payment is made or the application remains incomplete following its resubmission, the application will be dismissed."²² Star maintains that, on the basis of this language, it was "reasonable to conclude" that Northeast ceased being an applicant for licenses, subject to section 1.2105(c), when it failed to make its upfront payment by the May 30, 2002, deadline.²³ Although Northeast's failure to timely make its upfront payment did disqualify it from bidding in Auction No. 44 and suggested that WTB would in due course dismiss its application, the fact remains that, as of August 28 and 29, WTB had not dismissed Northeast's application and it thus remained pending under the rules.

6. Both before and after commencement of the auction, WTB issued multiple public notices warning auction applicants that they were required to comply with section 1.2105(c).²⁴ Two of those public notices, released shortly before Mr. Behenna telephoned Mr. Riordan, contained a specific reminder that *all* parties that had submitted a short-form application to participate in Auction No. 44 -- even those that were disqualified from bidding -- remained subject to the anti-collusion rule until the October 4, 2002, post-auction down payment deadline,²⁵ consistent with the definition of "applicant" contained in the anti-collusion rule.²⁶ Thus, Northeast was beyond question an "applicant for licenses" for the purposes of section 1.2105(c) when the two companies engaged in their discussion -- a communication plainly prohibited by section 1.2105(c).²⁷

Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 13 FCC Rcd 17877 (WTB 1998) ("When the short-form filing deadline passes, the anti-collusion rule applies to all applicants with submitted short-form applications . . . We . . . remind applicants that submitted applications, once the short-form deadline passes, trigger application of the anti-collusion rule even if they are later withdrawn.").

²⁰ *Response* at 2.

²¹ *See Auction of Licenses For 698-746 MHz Band; Status of FCC Form 175 Applications to Participate in the Auction; Extension of Upfront Payment Deadline*, Public Notice, DA 02-1213 (WTB rel. May 24, 2002) ("*Status PN*").

²² *Status PN* at 2.

²³ *Response* at 2. *See also, Auction No. 44, Lower 700 MHz Auction Band Closes, Winning Bidders Announced*, Public Notice, DA 02-2323 (WTB rel. September 20, 2002).

²⁴ *Procedures PN* at 8; *Status PN* at 4-5; *Auction of Licenses for 698-746 MHz Band; 128 Qualified Bidders*, Public Notice, DA 02-1346 (WTB rel. June 7, 2002) ("*Qualified Bidders PN*") at 7; *Auction No. 44, Revised Qualified Bidder Notification; 125 Qualified Bidders*, Public Notice, DA 02-1933 (WTB rel. August 7, 2002) ("*Revised Qualified Bidders PN*") at 7-8; *Auction No. 44 Revised Schedule, License Inventory, and Procedures*, Public Notice, DA 02-1491 (WTB rel. June 26, 2002) ("*Revised Schedule, Inventory and Procedures PN*") at 2.

²⁵ *Revised Schedule, Inventory and Procedures PN* at 2; *Revised Qualified Bidders PN* at 7.

²⁶ "The term *applicant* shall include all controlling interests in the entity submitting a short-form application to participate in an action (FCC Form 175)" 47 C.F.R. § 1.2105(c)(7)(i).

²⁷ Star also maintains that "[o]nce Northeast failed to perfect its application by meeting the contingency of making

7. There also is no merit to Star's claim that section 1.2105(c) has never been applied to the precise facts presented here.²⁸ It is axiomatic that the facts and circumstances of two cases will never be identical. Star attempts, for example, to distinguish from the instant case the *Reardon* and *Grady* cases²⁹ by pointing out insignificant factual differences between them and the instant facts. However, the legal principles discussed in that precedent are unquestionably on point. Collectively, these cases demonstrate that section 1.2105(c), by its plain language and as consistently interpreted by the Commission and its staff, applies to all entities that file short-form applications, regardless of whether they are ultimately disqualified from bidding in a particular auction, a fact of which Star and other Auction No. 44 applicants were repeatedly reminded by WTB in the auction public notices.

8. Contrary to Star's claim, it is of no consequence in determining that there has been a violation of section 1.2105(c) whether the parties who engaged in a prohibited dialogue ultimately reach an accord.³⁰ As stated in the NAL, a violation of section 1.2105(c) results from the mere communication between auction applicants of prohibited information.³¹ Similarly, we reject Star's claim that the communications at issue are beyond the scope of section 1.2105(c) because they were so vague that they did not compromise the auction process.³² While we agree that the underlying purpose of section 1.2105(c) is to prevent auction abuses, it is the substance and timing of specific communications that are key in determining whether there has been a violation of section 1.2105(c), not the impact or claimed lack thereof on a particular auction. Thus, although we find on the basis of the information before us that Star indeed altered its bidding behavior as a result of its communication with Northeast,³³ a fact that is probative of Star's noncompliance, we need not rely on that determination to conclude that Star violated section 1.2105(c). Star's further claim that section 1.2105(c) was intended to apply only to auction bidders rather than auction applicants³⁴ is flatly belied by the plain language of the rule section and the

an upfront payment, its application was rendered void *ab initio* – as if it were never filed.” *Response* at 2, n. 4. This is not correct. Rather, as noted above, the failure to perfect the application rendered Northeast ineligible to bid and its application subject to dismissal. Nevertheless, its application remained pending at the time of the behavior here.

²⁸ *Response* at 3.

²⁹ See Letter to John Reardon, Secretary to the Board of Directors and General Counsel, Mobex Communications, Inc., from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 13 FCC Rcd 17877 (WTB 1998) (“When the short-form filing deadline passes, the anti-collusion rule applies to all applicants with submitted short-form applications. . . We . . . remind applicants that submitted applications, once the short-form deadline passes, trigger application of the anti-collusion rule even if they are later withdrawn.”); Letter to Mark Grady, President, Communications Venture PCS Limited Partnership, from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, Federal Communications Commission, 11 FCC Rcd 10895 (WTB 1996) (“Even when an applicant has withdrawn its application during the course of the auction, the applicant may not enter into a bidding agreement with another applicant bidding on the geographic license areas from which the first applicant withdrew.”).

³⁰ *Response* at 3-5.

³¹ NAL, para. 19.

³² *Response* at 6-7. In fact, as concluded in the NAL, the parties did compromise the auction by providing Star with information to which other bidders lacked access. NAL, para. 20.

³³ The Commission's bidding records reveal that, after the August 29, 2002, conversation between Star's Behenna and Northeast's Riordan, Star began to bid actively and aggressively for Wisconsin and Iowa markets -- areas for which Star had shown no interest in its earlier bidding and in which Star, unlike Northeast, had no operations. Thus, the parties' denials notwithstanding, the evidence shows that the subject communication significantly impacted Star's auction bidding strategy. See NAL, paras. 14, 15, 19, note 60.

³⁴ *Response* at 4-5.

numerous Auction No. 44 releases issued by WTB. As noted *supra*, both before and after commencement of the auction, WTB issued multiple public notices warning auction applicants that they were required to comply with section 1.2105(c). Further, Star argues that the Commission should not enforce the anti-collusion rule because it was arbitrary for the Commission to adopt a rule that applies to an auction applicant that is not qualified to bid, but does not apply to an entity that never filed an auction application.³⁵ We reject this argument as an untimely request for reconsideration of the 1994 rulemaking order which adopted the anti-collusion rule.³⁶

9. Star's contention that its conduct in this case is substantially more benign than other cases that drew lesser or no sanctions also lacks merit.³⁷ Star's reliance upon *Mercury PCS II, LLC*³⁸ is particularly misplaced. The Commission found in *Mercury* that a bidder had placed trailing numbers at the end of its bids in an effort to surreptitiously communicate its bidding strategy to other participants. Although the Commission concluded that the bidder's conduct violated the anti-collusion rule, it declined to impose a sanction in that instance because the activity in question presented a case of first impression, and there was no prior notice that such specific conduct was proscribed.³⁹ In contrast, as discussed herein and in the NAL, the Commission repeatedly provided Star and other auction applicants with express notice that the conduct in which it engaged would violate the anti-collusion rule and was strictly prohibited.⁴⁰ Star's reliance on the *Commercial Realty St. Pete*⁴¹ and *U.S. West Communications, Inc.*⁴² cases also lacks merit. Star relies on these cases in support of its claim that "[w]here the Commission has imposed substantial forfeitures, it was for conduct significantly more egregious than that of Star and Northeast."⁴³ We disagree. Because collusive activities of any nature may adversely affect the fundamental integrity of the Commission's auctions processes, we find no public interest justification for minimizing Star's violation of section 1.2105(c). Furthermore, as discussed more fully below, the Commission considers a number of factors in determining the amount of a forfeiture to ensure, among other things, that the sanction is commensurate with the nature of the violation and consistent with that in other similarly-situated cases. In the instant case, Star's misconduct was willful, repeated, and serious. The sanction that we impose herein is, on balance and relative to the cases upon which Star relies (which

³⁵ *Response* at 6.

³⁶ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2,386 – 88 ¶¶ 221 – 226.

³⁷ *Response* at 7-9.

³⁸ *See In re Mercury PCS II, LLC*, 13 FCC Rcd. 23,755 (1998) ("*Mercury*").

³⁹ *Id.* at 23,759.

⁴⁰ *See supra*, note 24.

⁴¹ *See In the Matter of Commercial Realty St. Pete*, 11 FCC Rcd 15,374 (1996) ("*Commercial Realty*"). In that case, the Commission found that Commercial Realty had violated the Commission's anti-collusion rule by attempting to discourage other bidders from making down payments; that it had abused the Commission's processes by improperly claiming bidding credits as a woman-owned business, and that it willfully misrepresented that it was qualified to incur financial obligations exceeding \$40,000,000. As a result of its misconduct, the Commission imposed a \$390,000 forfeiture against Commercial Realty.

⁴² *See In re U.S. West Communications, Inc.*, 13 FCC Rcd 8286 (1998) ("*US West*"). In that case, US West, an auction participant, disclosed and discussed its bidding strategy to, and cooperated with, a competing auction participant during the auction, and failed to timely notify the Commission of the prohibited disclosure, discussion and arrangement. As a consequence, the Commission imposed a \$1,200,000 forfeiture against US West for its violations of sections 1.2105(c) and 1.65 of the Commission's rules.

⁴³ *Response* at 7.

imposed significantly higher forfeitures), entirely appropriate. Consequently, we conclude that Star's complaint of disparate treatment is without merit.

10. We also find no basis for reducing the forfeiture proposed in the NAL. Star claims that the assessment of a \$100,000 forfeiture in this instance will cause future auction applicants to consider carefully whether to voluntarily report potentially collusive conduct to the Commission.⁴⁴ The reporting of such information is not voluntary: section 1.2105(c)(6) requires such disclosure "immediately" upon a communication of bids or bidding strategies. Star's suggestion that the Commission should refrain from enforcing its auction rules for fear that such action might deter future compliance with this disclosure requirement is meritless. Star's further claim that it did not intend to violate section 1.2105(c) is irrelevant; the violation was willful as is defined by the Act.⁴⁵ Star's representative did not accidentally telephone his counterpart at Northeast to solicit a conversation relating to Auction No. 44 during the period of time when such communications were strictly proscribed, nor was it an accident that they engaged in a prohibited discussion the next day. While Star may not have set out with the specific intention of violating the rule, its actions were indisputably willful and patently inconsistent with the plain language of section 1.2105(c). In this regard, section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁴⁶ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,⁴⁷ and the Commission has so interpreted the term in the section 503(b) context.⁴⁸

11. We also reject Star's contention that it did not repeatedly violate section 1.2105(c). Star claims that, even if it did violate section 1.2105(c) on August 29, 2002, the voicemail message that its representative left on the telephone answering machine of Northeast's representative the prior day did not constitute a violation of the anti-collusion rule.⁴⁹ We disagree. As we observed in the NAL, it is clear from the parties' subsequent communication that Star's Mr. Behenna contacted Northeast's Mr. Riordan on August 28, 2002, in order to initiate a discussion concerning bidding strategy. Nothing that Star has presented in its Response leads us to any other conclusion. Star concedes it placed the call to, and left a message on the answering machine of, Northeast's auction representative. The only logical conclusion that one can draw, given the subsequent conversation between the two representatives, is that the message involved a solicitation about a prohibited subject: Star's auction bidding plans.⁵⁰ In any event, we conclude that even if the behavior constituted only one violation on August 29, 2002, a \$100,000 forfeiture is still appropriate.

⁴⁴ *Response* at 9-10.

⁴⁵ *Id.* at 8.

⁴⁶ 47 U.S.C. § 312(f)(1).

⁴⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁴⁸ *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁴⁹ *Id.* at 10.

⁵⁰ As described in the NAL, from the auction-related communications that occurred between Mr. Behenna and Mr. Riordan, Star learned of Northeast's interest in certain markets and thus knew about potential post-auction demand for the licenses in certain markets in Auction No. 44, and Northeast had an opportunity to influence Star's auction plan and strategy for its own purposes. NAL, 18 FCC Rcd at 17,657. *See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 468 (1997) ("[A]uction applicants should avoid all discussions with each other that will likely affect bids or bidding strategy . . .").

12. In light of the foregoing analysis, we find that Star willfully and repeatedly engaged in violations of section 1.2105(c) of the Commission's Rules by discussing bidding strategy with a competing applicant during Auction No. 44. The first violation occurred on August 28, 2002, when Mr. Behenna left a voicemail message for Mr. Riordan, a communication that solicited Star's primary violation, which occurred on August 29, 2002, when the two individuals, on behalf of their respective companies, engaged in Mr. Behenna's requested conversation about bidding strategy. These telephone calls took place during the period of time in which discussions about such subjects between or among auction applicants in Auction No. 44 were strictly prohibited.

13. The Commission's *Forfeiture Policy Statement*⁵¹ specifies that the Commission shall impose a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁵² In this case, taking all of these factors into consideration, we find that Star is liable for a forfeiture in the amount of \$100,000.

14. We also reject Star's claim that the NAL did not properly consider the factors set forth in section 503(b)(2)(D) of the Act.⁵³ We carefully considered each of the factors in the NAL and have done so again here and find no basis for mitigating the proposed forfeiture. Additionally, we base the forfeiture amount in this case on the severity of the misconduct generally, irrespective of the number of violations. Given the multiple admonitions about collusion issued by WTB to auction applicants in Auction No. 44, Star knew or should have known that the communications that it solicited and in which it engaged were proscribed. The violations committed by Star had the potential to affect the fundamental integrity of Auction No. 44. With respect to Star's request for mitigation because it voluntarily disclosed the communications to the Commission,⁵⁴ Star was required by section 1.2105(c)(6) of the Commission's rules to do so. Although Star suggests an inability to pay the forfeiture proposed in the NAL,⁵⁵ it has presented no documentation in support of such a claim. We conclude, on balance, that the forfeiture amount is justified by the severity of the violations.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Act,⁵⁶ and sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,⁵⁷ Star IS LIABLE FOR A MONETARY FORFEITURE in the amount of One Hundred Thousand Dollars (\$100,000) for willfully and repeatedly violating section 1.2105(c) of the Commission's rules.

⁵¹ *The Commission's Forfeiture Policy Statement and Amendment of section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b).

⁵² *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶ 27.

⁵³ *Response* at 8-9.

⁵⁴ *Id.* at 8.

⁵⁵ *Id.* at 9.

⁵⁶ 47 U.S.C. § 503(b).

⁵⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

17. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail Return - Receipt Requested, to: Star Wireless, LLC, 4000 Palos Verdes Dr. North, Suite 201, Rollings Hills Est., California 90274; and to its counsel: Mark J. Tauber, Esq., Piper Rudnick, 1200 Nineteenth Street, N.W., Washington, D.C. 20036-3900.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau